

Climate Protection Program EITE Rulemaking RAC 3 Memo on Proposed Rule Changes

Overview

The Climate Protection Program is designed to significantly reduce greenhouse gas emissions, support Oregon's economy and promote equitable outcomes for environmental justice communities. DEQ aims to incentivize emission reductions at emissions-intensive, trade-exposed, EITE, and direct natural gas, DNG, sources while recognizing the special circumstances those sources face as trade-exposed, and the role they play in supporting Oregon's economy. DEQ is requesting comment on proposed rule changes to the Climate Protection Program (OAR Chapter 340, Division 273) for EITE and DNG sources.

DEQ staff have developed draft rules informed by preliminary listening sessions with interested parties, meetings with EITE and DNG sources, rulemaking advisory committee member and public comments, discussions with jurisdictions who have EITE programs, and review of emissions data and production levels.

These rules may change with new information and input as the rulemaking continues.

This memo discusses the draft rules, including:

1. Greenhouse gas emissions intensity benchmarks
2. New products, processes and sources
3. Reduction schedules
4. Adjustments to reduction schedules
5. Significant production downturns
6. Compliance instrument distribution
7. Use of community climate investment credits
8. Applicability and cessation
9. Clarifications

1. Greenhouse gas emissions intensity benchmarks (0320)

The language in the draft rules reflects the same general staff leanings discussed at the second rulemaking advisory committee meeting.

The draft rules direct DEQ to create source-specific benchmarks, with the opportunity for source-specific product-differentiated benchmarks, through the Climate Protection Program's permitting process. These benchmarks would be greenhouse gas emissions intensity values unique to each EITE or DNG source. They would be a generally static element in the formula DEQ uses to distribute compliance instruments to sources under the program. At the request of a source, DEQ could create unique benchmarks for the different products a source manufactures -- for example, one benchmark for $\frac{3}{8}$ -inch plywood and a separate benchmark for particle board.

The draft rules direct DEQ to base benchmarks on average covered emissions data from 2023-2025, with the ability for sources to make the case these data years are not representative and to suggest alternative data to inform their benchmark(s). The draft rules outline a process for sources to provide reasons the years from 2023-2025 are abnormal or otherwise not representative of future production and request DEQ expand or change the data set to include some set of one to three years between 2021 and 2026. If different data years are proposed to be used, they must be third-party verified.

Draft rules language is in the draft rules document, rule 340-273-0320.

Questions

- a) Do the proposed benchmarking provisions provide the right balance of accuracy, flexibility, and administrative feasibility while incentivizing emission reductions at EITE and DNG sources?
- b) If not, what specific adjustments would better support both reliable emissions-intensity benchmarking and practical implementation for your facility?

2. New products, processes and sources (0320)

The draft rules outline how new products and new production processes would be incorporated into the Climate Protection Program. As facilities expand or introduce new lines of production, DEQ aims to ensure emissions intensity from these activities is reflected accurately and consistently within the program, and intensity continues to decrease, while supporting innovation and operational growth.

Under the draft rules, products introduced in 2026 or later would not incur compliance obligations until the first year of the next compliance period. This provides time for DEQ and sources to establish an appropriate emissions-intensity benchmark for the new product, or to add that product into a source-wide benchmark. DEQ would develop this benchmark using up to the most recent two years of available production and emissions data. If a source does not yet have sufficient operational history for the new product, DEQ may rely on modeling, engineering estimates, comparable process data, or partial-year datasets to create a temporary benchmark. Once adequate production and emissions data exist, DEQ would revisit and update the benchmark to reflect actual operations.

Benchmarks for new products would follow the same emissions-intensity approach applied to existing EITE and DNG sources and would inform future compliance instrument distribution beginning with the next compliance period.

All emissions data used to establish these benchmarks must be submitted under existing greenhouse gas reporting rules in OAR 340-215. DEQ is continuing to evaluate how production data for new products should be submitted to ensure clear and consistent reporting and to support accurate benchmark development.

Staff lean towards maintaining a straightforward process that integrates new products and processes into the Climate Protection Program while ensuring benchmarks remain representative, transparent, and adaptable as facilities evolve.

Draft rules language is in the draft rules document, rule 340-273-0320.

Question

- a) What considerations or challenges do you foresee with the proposed process for incorporating new products or new production processes?

3. Reduction schedules (0330 and 9000)

The draft rules include reduction schedules that would adjust how many free compliance instruments DEQ will distribute over time per unit of production. These schedules are uniform across sources, paired with a process to apply for reduction adjustments. They include reductions for EITE sources starting in 2030 and occurring each year thereafter.

The draft rules include reduction schedules of 0% per year in 2028 and 2029, and 1.5% per year thereafter. Such a schedule allows multiple years for sources to plan and implement reductions, while working towards significant emission intensity improvements in the future.

The 1.5% reduction per year is a faster rate than Washington's program, at an annualized 0.75% reduction in no-cost allowances, but slower than the programs in California, approximately 3-4% annual reductions in no-cost allowances, and Quebec, roughly 2-4% annual reductions in no-cost allowances. Oregon's reductions also start later; while Washington's EITE allowance distribution reductions start in 2027, Oregon's EITE compliance instruments reductions would start in 2030. To be clear, these are not direct comparisons. Programs use different benchmarks, different benchmark years, in a different program with different markets and constraints.

The 0% then 1.5% per year schedule is slower than the placeholder reduction schedule currently in the rules for EITEs, and slower than for other regulated entities.

The schedule aims to balance the emissions reductions between the various source categories regulated under the Climate Protection Program, instead of requiring all the reductions from liquid fuel providers and local distribution companies.

When coupled with the ability for sources to request an adjustment to the schedule, these percentages work to balance the multiple goals of the climate program, by reducing emissions yet supporting our EITE and DNG sources. Furthermore, DEQ is now proposing to allow sources to apply for adjustments to reduction schedules for the 2030-31 compliance period.

As Oregon's Administrative Procedures Act requires DEQ reviews these EITE rules within five years of adoption, DEQ would review how well this reduction schedule is functioning no later than 2032.

Draft rules language is in the draft rules document, rule 340-273-0330 and rule 340-273-9000, Table 8.

Question

- a) What thoughts do you have about the proposed 0% reduction for two years, then 1.5% per year thereafter?

4. Adjustments to reduction schedules (0330)

The draft rules include the ability for sources to apply for adjustments to reduction schedules if further reductions are not feasible. Infeasibility may be based on the following, or other approved DEQ rationale:

- Economic feasibility could mean an economic assessment demonstrates the cost is more than double the costs of earning CCIs, or DEQ approves an alternative economic assessment showing any potential reduction measures are not economically viable.
- Technologic feasibility may include the availability of the necessary equipment, skilled workforce, fuel or electric supply, infrastructure, permitting pathway, and operational support can be secured for that facility and placed in service within the relevant compliance period.

Under the draft rules, sources can request to adjust the reduction schedule on a facility-by-facility basis, starting in the first compliance period with a reduction requirement (2030-2031). The proposed rules require applications to be submitted at least 18 months before the upcoming compliance period.

Individual adjustments would be allowed for a maximum of two compliance periods (four years). DEQ is considering a streamlined re-application process for adjustments that need to be continued longer than that but currently does not believe the details of this process should be in rule language.

The draft rules direct DEQ to include enhanced reduction requirements following an adjustment to "true up" the issuance of free compliance instruments, where possible. For example, a DEQ approval of an adjusted reduction schedule may require that, following completion of the adjustment period, the emissions reduction target will decrease more quickly until a facility's allocation of instruments for future calendar years aligns with the values outlined in OAR 340-273-9000, Table 8.

Compliance instruments given during the adjustment period may not be transferred or traded.

Draft rules language is in the draft rules document, rule 340-273-0330(2).

Questions

- a) Would the proposed adjustments to reduction schedules allow for facility flexibility while promoting reductions in greenhouse gas emissions?
- b) What are your comments on the type of information that sources would have to provide to request an adjustment? Is the list comprehensive or is there additional or alternative information that should be provided?
- c) What are your thoughts on the parameters that DEQ would use to determine economic feasibility or technological feasibilities?

5. Adjustments during significant production downturns (0330)

The draft rules include the ability for sources to apply for an adjustment to the reduction schedule if unplanned catastrophic circumstances cause a substantial disruption to facility-wide production, resulting in significant increases in emission intensities and actual emissions exceeding the projected compliant level.

For these provisions, an unplanned catastrophic circumstance is defined as an unexpected and significant event that materially disrupts an EITE facility's operations or assets and exceeds the capacity of routine operational systems or procedures to manage. Such an event would lead to a notable facility-wide production downturn, in turn resulting in a meaningful increase in emissions intensity. Examples of unplanned catastrophic circumstances might include:

- Natural disasters: events such as earthquakes, wildfires, floods, hurricanes, or volcanic activity that damage facilities or disrupt operations.
- Major equipment failure: unexpected failure of critical machinery like boilers, pipelines, compressors, storage tanks, or reactors that lead to significant operational disruption or danger. This could include cyber-attacks on control systems.
- Significant market disruptions: Significant and sudden changes in product demand or major supply chain interruptions.

The draft rules provide sources eligibility to apply during the compliance period in which the event occurred, provided the source provides verified documentation demonstrating the event was an unplanned catastrophic circumstance.

The draft rules allow sources to apply when a facility's emission intensity increases by at least ten percent above its established benchmark and adjustment from reduction schedule. This value was chosen based on an analysis of historical emissions data from 2020 through 2024, and an evaluation of how changes in emission intensity influence the distribution of compliance instruments.

The draft rules provide that if the application is approved, the compliance instruments distributed would be based on a baseline production scenario. Compliance instruments distributed would be based on the emissions that would have occurred if the facility operated at a representative baseline production level under the scheduled emissions-intensity target for that year (calculated using the benchmark and reduction schedule). This approach estimates expected emissions under stable operations, independent of actual production variability.

Example – Baseline production scenario

The baseline greenhouse gas intensity value was established at 6 MTCO₂e per unit of production. Under the applicable reduction schedule, the emissions-intensity target decreases by 1.5 percent per year, or 3 percent per compliance period, beginning in 2030.

In 2038, an unplanned catastrophic operational event results in a substantial production downturn accompanied by a 33 percent increase in the emissions-intensity value. This change meets the criteria for a baseline production scenario for determining the number of compliance instruments to be distributed.

Under this scenario, the baseline production value is applied and multiplied by the scheduled emissions-intensity reduction schedule and benchmark to determine the annual distribution.

Baseline values

- Emissions intensity benchmark: 6 MTCO₂e per unit
- Production: 3,000 units

Production downturn in 2038

- Emissions intensity: 8 MTCO₂e per unit
- Production: 1,800 units
- Actual emissions: 14,400 MTCO₂e

Compliance instrument distribution calculation

- *Before adjustment:* 0.865 reduction × 6 benchmark × 1,800 units = 9,000 instruments
- *After adjustment:* 0.865 reduction × 6 benchmark × 3,000 baseline units = up to 15,570 instruments

The draft rules give DEQ discretion to authorize a baseline production scenario up to the end of the current compliance period.

An EITE source must surrender any compliance instruments distributed during the adjustment period if not used for compliance and compliance instruments given during the adjustment period may not be transferred or traded.

Draft rules language is in the draft rules document, rule 340-273-0330(3).

Questions

- a) What are your comments on the proposed approach for providing an additional reduction schedule option for these types of unplanned catastrophic events?
- b) Are there other options that might be more streamlined for sources or DEQ that would meet the same need?
- c) Does 10% increase in emissions intensity represent a significant increase? If not, what value or increase percent should be used?
- d) The draft rules include a requirement that any banked instruments due the adjustment be surrounded to prevent potential overallocation. Is this provision adequate? Should this provision apply to all adjustments to reductions schedules?

6. Compliance instrument distribution (0420)

The draft rules provide an approach to compliance instrument distribution. The rules propose DEQ would distribute compliance instruments to EITE and DNG source for each year based on last year's unverified production data and then return to true-up those compliance instruments once the year of compliance's actual production data are verified. This is similar to the Washington state approach.

Draft rules language is in the draft rules document, rule 340-273-0420.

Question

- a) Do you have any input on the proposed method for distributing and trueing up compliance instruments?

7. Use of community climate investment credits (0450)

The draft rules increase the percentage of community climate investment credits (CCI credits) EITEs and DNGs may use to meet their compliance obligations, from the current 20% up to potentially 100% of their compliance obligation.

EITE and DNG sources could apply to get DEQ's authorization to use a higher percentage of CCI credits, up to 100%, by demonstrating commitment to strong labor practices, environmental stewardship, and community benefits. Sources applying for this higher percentage would need to have a community benefit agreement and demonstrate that over the past five years they have no more than two state or federal labor law violations, are paying prevailing wage, and have no more than two DEQ violations.

Draft rules language is in the draft rules document, rule 340-273-0450.

Questions

- a) Do the draft rules balance providing an additional compliance option for sources while reducing emissions and supporting equitable community outcomes?
- b) What are your thoughts on the additional requirement for sources if they want to apply to meet their compliance obligations with more than 30% CCIs?
- c) Should sources be required to use all banked compliance instruments before being able to use a higher percentage of CCIs for their compliance obligation?

8. Applicability (0110) and cessation (0130)

The draft rules would require that a source be above the 15,000 MTCO₂e emissions thresholds for two consecutive years before that source would become an EITE or DNG source. DEQ recently encountered a source which historically and in the future is not expected to be above the emissions threshold but was above the threshold for one year due to one-off circumstances. Using two years of data would mitigate this type of circumstance and reduces administrative burden for both the source and agency.

The draft rule also propose that a source would cease to be an EITE or DNG source if covered emissions are zero MT CO₂e for four years (as opposed to the current six years). If covered emissions are less than 15,000 MTCO₂e for four years, the source could apply for cessation or DEQ could determine the source would cease to be an EITE or DNG source.

Draft rules language is in the draft rules document, rule 340-273-0110 and -0130.

9. Clarifications (0020, 8110 and 9000)

These draft rules include other small changes or clarifications for EITE and DNG sources.

- Clarify the definition of DNG source in OAR 340-273-0020 excludes being an EITE source. That is, if a source is an EITE as defined in that rule, it is not a DNG source.
- Explicitly provide DEQ the ability to adjust permitting deadlines for Climate Protection Program under OAR 340-273-0150, by adding permitting to the deadlines adjustment rule language in OAR 340-273-8110.
- Change the last compliance period in Table 8 in OAR 340-273-9000 from 2049-51 to 2050-51.

Additional information

For updates on the EITE rulemaking, please [subscribe for email updates](#) and visit the [EITE rulemaking web page](#).

Please visit the [program web page](#) for more information on the Climate Protection Program.

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